

THE HIGH COURT OF TRIPURA
A G A R T A L A

CRP 16 OF 2013

Sri Birendra Chandra Biswas,
Son of Late Subodh Chandra Biswas,
Resident of Ramesh Chowmohani,
PS-Radhakishorepur, Udaipur,
District-South Tripura.

..... **Plaintiff-Petitioner.**

- V e r s u s -

Sri Ratan Chandra Dhar,
Son of Sri Pyaarimohan Dhar,
Resident of village-Khilpara,
PO-North Maharani, PS-Radhakishorepur,
Udaipur, District-South Tripura.

..... **Defendant-Respondent.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the petitioner : Mr. Rajib Datta, Advocate.

For the respondent : Mr. S.M. Chakraborty,
Sr. Advocate,
Mr. S. Bhattacharji, Advocate,
Ms. B. Chakraborty, Advocate.

Date of hearing & judgment : 09.04.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER (ORAL)

This petition is directed against the order dated 08-02-2013 passed in case No. Money Suit 06 of 2011 whereby the learned Civil Judge (Sr. Division), South Tripura, Udaipur rejected the application filed by the plaintiff under Section 62 Explanation 2 of the Evidence Act to exhibit 112 number of carbon copies with permission to exhibit these documents.

2. The learned Court below has rejected the application but the grounds given by him, in my opinion, are not at all tenable. At the outset, it may be mentioned that the application as filed has wrongly been filed under section 62 of the Evidence Act. No application is required to be filed to lead primary evidence. The basic problem in this case was that after the evidence of both the parties was closed, this application was filed. As such, the application should have been filed for permission to lead evidence either under Order XVIII or filing an exemption under Order XIII of the Code of Civil Procedure (CPC).

3. The procedure by which a civil suit has to be decided is laid down in the CPC. The Evidence Act does not lay down the procedure. It only deals with which evidence is relevant, how the relevant evidence is admissible and how the same has to be marked in evidence. The applications are procedural in nature and no application under section 62 of the Evidence Act was actually maintainable.

4. Under the CPC, a plaint is filed in terms of Order VII of the CPC. Order VII Rule 14 of the CPC provides that where a plaintiff sues on the basis of certain document or relies upon such documents, in case such documents are in his possession or power, he should produce the said documents in Court when the plaint is presented by him and where the documents are not in his power or possession, then he shall enter the same in a list of reliance and mention in whose possession the documents are.

5. Written statement is filed under Order VIII.

6. Order IX of the CPC deals with appearance and non-appearance of parties and consequences thereof.

7. Order X deals with examination of parties by the Court to ascertain whether any allegations are admitted or not admitted to be correct. This oral examination is contemplated after pleadings have been filed but before issues are framed. Under Order X the parties can also be asked to admit or deny the documents produced by either side so that the dispute in the case can be narrowed down.

8. Order XI of the CPC deals with discovery and inspection of documents where either party can either submit interrogatories or file an application directing the other party to produce certain records for discovery and admission.

Order XII deals with admissions made in a case and in case, the defendant has admitted some portion of the plaint, then a decree in terms of the admission can be passed in terms of Order XII Rule 6 of CPC.

9. Order XIII which is very relevant for the decision of this case deals with the production, impounding and return of documents. Under Order XIII Rule 1 all documents which are relied upon by the parties must be produced in original before the Court before the settlement of issues. Therefore, normally it is expected that all documents which are in the possession of the parties

should be filed in original in Court before the framing of issues. Even with regard to those documents which are not in possession, a list of reliance must be filed with every suit indicating what are the documents which the plaintiff or the defendant wants to rely upon, the person in whose possession the document is and how the document is relevant and how the document is sought to be produced before the Court. At the same time, it must be made clear that only because a document in original is not filed prior to the framing of issues does not mean that the party is totally debarred from filing the same at a later stage. Order VII Rule 14(3) itself prescribes that with the leave of the Court a document can be filed at a later stage also. Even under the provisions of Section 151 of CPC, a document may be produced at a later stage; (i) if the party can satisfy the Court that either it was not in possession of the document when the issues were framed; or (ii) that due to inadvertence or genuine mistake the same was not filed.

10. Issues are framed in terms of Order XIV of CPC and after framing of issues, the next part is summoning and attendance of witnesses which is done in terms of Order XVI of CPC. The trial commences at the time of framing of issues and then the witnesses are to be summoned in terms of Order XVI.

11. Order XVII is similar to Order IX and deals with the adjournments to be granted during the course of trial, i.e. post

framing of issues and the consequences of appearance and non-appearance of parties.

12. Thereafter, the parties and the witnesses are examined in terms of Order XVIII of CPC and the hearing of the case is conducted according to Order XVIII of CPC. Order XVIII Rule 17A of CPC, as it originally stood, provided that documents not previously known could be produced with the permission of the Court. Though this Section has been deleted, the Apex Court in ***Salem Advocate Bar Association vs. Union of India, [(2003) 1 SCC 49]*** has held that the Court still has the power to permit documents to be produced if the Court is satisfied that the documents could not be produced or exhibited despite exercise of due diligence.

13. As far as the present case is concerned, I have gone through the record and I find that the documents which are sought to be produced were actually filed with the plaint. They are carbon copies of bills/vouchers/invoices. The defendant-respondent does not admit the correctness of the same. However, the fact remains that they were produced by the plaintiff along with his plaint.

14. This Court cannot lose sight of the fact that parties are not aware about the intricacies of law. A party can at best tell his or her lawyer that these are the documents. The documents were handed over to the lawyer who, in fact, filed the same along with the plaint. However, when the evidence of the plaintiff and his witnesses was being recorded, the documents were not got

exhibited. When the evidence of the defendants was being recorded, these documents were not shown to those witnesses. The fault is of the counsel and not of the party. I am clearly of the view that the party should not suffer due to the fault of the counsel.

15. Having said so, I must observe that the counsel made an ingenious attempt to circumvent the law by filing the application under section 62 of the Evidence Act. No application to lead evidence under section 62 is maintainable. Evidence has to be filed in terms of the Code of Civil Procedure and section 62 only comes into play to decide whether the evidence is primary evidence or not. At this stage, this Court is not deciding whether the evidence produced is primary evidence or not because the defendant had not admitted the correctness of the documents. Unfortunately, the Court did not follow the procedure laid down by the CPC and did not ask the parties to admit or deny documents. The counsel of the plaintiff was also at fault inasmuch as the said documents which were on record were not put to the witnesses and no attempt was made to get the same exhibited in evidence.

16. In view of the above discussion, I am of the view that the plaintiff should not be penalized for the fault of his counsel. As such, the order of the learned trial Court is set aside and the plaintiff is given one opportunity to prove his case. This will be subject to the following conditions:-

(i) The plaintiff shall pay to the defendant costs of Rs.5,000/- on or before the next date of hearing fixed i.e. 20th May, 2015;

(ii) In case, costs are not paid on or before the said date, then this petition shall be deemed to have been dismissed;

(iii) In case, costs are paid then the learned Court below shall grant one date only to the plaintiff to examine his witnesses to prove these documents;

(iv) It shall be the responsibility of the plaintiff to bring all the witnesses to Court on the date so fixed so that they can be examined and cross-examined on the same date;

(v) The defendant shall be entitled to urge that the documents are not admissible in evidence;

(vi) That in case, the plaintiff leads evidence to prove the documents, then the defendant shall also be permitted two opportunities to lead counter evidence, if they so want. Thereafter, the case shall be decided on merits.

17. The parties are directed to appear before the learned trial Court on **20-05-2015**.

18. With these observations, the petition is disposed of.

The Registry is directed to send back the records so as to reach before the next date.

CHIEF JUSTICE